

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE GREAT BRITISH TEDDY BEAR
COMPANY LIMITED,

Plaintiff,
against -

12 CV 3926 (TPG)

MCNEIL-PPC INC. and
VIDAL PARTNERSHIP, INC.

Defendants.
-----X

DECLARATION OF MICHELLE SULLIVAN-BRADY
IN SUPPORT OF MOTION FOR DISMISSAL OF THIS ACTION

MICHELLE-SULLIVAN-BRADY declares under penalty of perjury as follows:

1. Between January and April 2012, in my capacity as Broadcast Business Manager of The Vidal Partnership, I engaged in an e-mail correspondence primarily with Paul Jessup of The Great British Teddy Bear Company Limited. Set forth below is a complete and accurate compilation of those e-mails. To enhance readability, the fonts and margins have been made uniform and each e-mail is numbered and has a heading identifying the date and time of the e-mail and its sender and addressee.

1. January 17, 2012; 23:27; Sullivan-Brady to sales@rachelbears.co.uk

To Whom It May Concern,
Hello and Happy New Year! I am very interested in using your Robin Hood Teddy Bear in one of our ads. Can you please let me know who I should speak to about obtaining legal rights for this?
Thank you so much!
Michelle

2. January 18, 2012; 5:17 AM; sales@rachelbears.co.uk to Sullivan-Brady

Hello Michelle,
Thank you for your email. Happy new year to you!
I am pleased to confirm that I have been in contact with The Great British Teddy Bear Company on your behalf, you can expect to hear from their legal department shortly.
If you have any further queries, please do not hesitate to contact me.
Kind Regards,
Rachel

3. January 18, 2012; 5:20 AM; Jessup to Sullivan-Brady

Dear Michelle
I received the email below via one of our retail partners "Rachels Bears".
We would be delighted to discuss the use of our Teddy Bear in one of your ads, we are committed to enhancing our brand and believe that building partnerships with others that echo our core values, will introduce our bears to a wider audience. If you could let me know who your audience are I am sure we will be able to work together.
regards

4. January 20, 2012; 15:45:14 GMT; Sullivan-Brady to Jessup

Hello, Paul!
We were hoping to use your Robin Hood Teddy Bear in one of our internet ads for a Pharmaceutical client of ours. I can't tell you the name of the client yet, for confidentiality reasons, but I can tell you that the concept of the ad is for the bear to be portrayed as one of the things in your everyday life which you love, but which could be triggering allergic symptoms. FYI, other versions of the ad feature a kitten and flowers.
If you are OK with the basic concept and think we could move forward with this, please let me know what next steps would be, so I can tell my team if they should proceed with the concept or not. I will be able to share more details with you when things are more finalized.
All the best,
Michelle

5. January 23, 2012; 4:47 AM; Jessup to Sullivan-Brady

Dear Michelle
Good to hear from you. I have a couple of questions:
Why our Robin Hood Teddy Bear, rather than a generic teddy bear

Where will the ad be shown

How many people do you expect to see the ad

My initial reservation is likely to be shared by any soft toy manufacturer.....

Our Bears are made from a hypoallergenic plush and stuffed with a hypoallergenic stuffing in accordance with ASTMF & CSPIA Federal toy safety regulations making our toy less likely to trigger allergic reactions.

http://www.professional-laboratory.com/product_61.html

I would not want our brand to be misrepresented as "triggering allergic symptoms"

However I am excited about our brand being something loved.

regards

6. January 23, 2012; 2:19 PM: Sullivan-Brady to Jessup

Dear Paul,

Thanks so much for your reply. In answer to your questions:

1. we'd like to use your Robin Hood Teddy Bear in particular because part of the concept involves the arrows that the bear carries.

2. The ad will be used online only, no TV.

3. Per our media dept. the total impressions will be 194 million.

I appreciate your concern about having your bear being linked in people's minds with allergic reactions, however the voice over dialogue specifies that the allergic reactions are caused by dust mites on the Teddy Bear, not the Teddy Bear itself. Is this enough for you to feel comfortable participating in this advertising campaign? If so, I would be happy to send you the storyboard if the client approves this concept.

Please let me know.

Thanks,

Michelle

7. January 23, 2012; 2:26 PM: Jessup to Sullivan-Brady

Michelle

So we are talking about dust mites on your favorite toy – I like that.

I happy for you to include The Great British Robin Hood Bear[©]™ in your concept.

If your client approves the concept we can agree terms and issue a release agreement.

Would you like a bear?

regards

8. January 23, 2012; 2:45 PM: Sullivan-Brady to Jessup

Paul,

Thanks so much for this rapid response. This is GREAT news! I just need to clarify about whether there will be any costs associated with using the Teddy Bear. If so, we need to know this up front to factor this into the decision about which concept to use. Please let me know as soon as possible, even if it's only a ballpark figure.

Thanks again!

Michelle

BTW, I would love a bear!

9. January 24, 2012: 6:25 AM: Jessup to Sullivan-Brady

Dear Michelle

I have asked our finance department to look at "associated costs" and will get back to you with a proposal ASAP.

Our brand is well established in the UK, we are the first choice of The Historic Royal Palaces, British Government and Armed Services - with a big British year ahead of us one of our key goals is to locate a distributor in the USA. Bear collectors across America love our Great British Bears and with the right distributor we hope to reach a wider audience and in the future introduce some iconic American Bears.

Disney found us in the early days and we are resident in their Great Britain Store at Epcot, even The Liberty Island Gift shop sell our bears! But we could use some help from a friend like Vidal Partnership.

Maybe we could help you with the loan of Robin Hood and you could reach out to some of your friends and introduce The Great British Teddy Bear Co.

I guess launching our brand with a US distributor would be easier after 194m people have seen one of our bears?

Let me know your thoughts.

Please return your address, I will send some bears

regards

10. January 24, 2012: 1:23 PM: Sullivan-Brady to Jessup

Dear Paul,

Yes, I think that launching the brand with a US distributor would be much easier after 194 million people have seen the bear. This could certainly be beneficial to both parties. Please get back to me ASAP with the "associated costs" proposal from your finance department.

Also, thanks so much for the kind offer of sending bears to us. It's much appreciated. I certainly don't mean to be indelicate, but I do need to be clear: as of this moment we don't have full client approval on this concept and, while the bears may help to advance our promotion of this concept, we can't incur any costs for this. That said, as much as I would like to offer to cover shipping them, I

can't. If you are still willing and able to send the bears, my mailing address is below:

All the best,
Michelle

11. January 24, 2012; 3:24 PM; Jessup to Sullivan-Brady

Hi Michelle

We send bears all over the world every day, to clarify - the bears are a gift from me.

Regarding "associated costs" let me clarify my suggestion:

I agree that launching the brand with a US distributor would be much easier after 194 million people have seen the bear so my suggestion is that we waive any "associated costs" in return The Vidal Partnership reach out to some of their friends and introduce The Great British Teddy Bear Co.

So to be really clear :

I will send you some free bears

You can present your concept using our brand with my permission

If the concept is approved and our bear is used in the advert - Vidal will introduce us to a US Distributer

regards

12. January 24, 2012; 3:30 PM; Sullivan-Brady to Jessup

Paul,

Thanks so much for the clarification; I'm glad we're "on the same page" with this. We would be delighted to do whatever we could to talk you up and help introduce you to a distributor in the US. I'll let you know as soon as we hear which concepts the client has decided to go with.

All the best!

Michelle

13. February 2, 2012; 4:28 PM; Sullivan-Brady to Jessup

Hi, Paul!

I just wanted to let you know that the bear arrived today and he is sooooo cute...even cuter in person than in the pictures. Thank you.

I also wanted to let you know that the concept with the bear was approved.

Attached is the board, which will show you almost frame by frame the ad as it will appear online. FYI, the bear in the boards is for-position-only. We'll replace that one with a photo of the bear as he actually appears-in the correct colored clothing, etc. As soon as it goes online, I'll let you know so you can find it.

All the best,
Michelle

The frame-by-frame storyboard that I sent with that e-mail is set forth on the next page.



¿Picazón en los ojos?



¿Por qué?

- An allergen appears in the middle of the picture.



• A series of arrows point to the eyes, making it clear why it may be causing the discomfort. The person's eyes are itchy when their eyes are irritated.



• The cracked barrier helps prevent and reveals a teddy bear with a bow and arrow, showing that the allergen is responsible for the damages.

Puede ser alergia a los ácaros en tu peluche favorito.



• It may be allergies to the dust mites in your bedroom.

• As the teddy bear is involved in a new block of copy appears.

Prueba Zyrtec® para aliviar los síntomas de alergias.



• Is Zyrtec® for relief of your allergic reactions.

• The teddy bear moves slightly and a product shot appears along with the main advertisement.

• The product shot is a small image of the Zyrtec product box and bottle, showing the brand name and dosage information.

14. February 6, 2012; 5:57 AM; Jessup Sullivan-Brady

Congratulations!
So to refresh your memory:
So to be really clear :
I will send you some free bears
You can present your concept using our brand with my permission
If the concept is approved and our bear is used in the advert - Vidal will introduce us to a US Distributer
Let me know which friendly distributer you will be introducing us to.
Best wishes
Paul Jessup

15. February 6, 2012; 10:00 AM; Sullivan-Brady to Jessup:

Good Morning, Paul!
Hope you had a good weekend. I'm still doing research on distributors because, as I said in previous emails, we're happy to talk you up and rave about the bear but we're an ad agency, so we don't really deal with the distribution end of business at all. However, I'm doing my best to find someone to put you in contact with.
I'll let you know as soon as I have any info.
Thanks,
Michelle

16. March 5, 2012; 1:24 PM; Jessup to Sullivan-Brady

Hi Michelle
Any chance of an update?
Has the ad aired?
Did you locate a distributer for us?

17. March 14, 2012; 6:21 PM; Sullivan-Brady to Jessup:

Hello, Paul!
Through my research online I found someone that I think would be a possible distributor, but since I have nothing to do with this world normally, I'm not sure of next steps. Their name is Entertainment Earth (www.eedistribution.com) and they seem to deal with a lot of different items. Especially interesting to me was the fact that they deal with items with licensing issues.
Please let me know if this helps.
All the best,
Michelle

18. March 14, 2012; 6:21 PM; Jessup to Sullivan-Brady

Hi Michelle

I hoped that you would have a client that may be connected with a soft toy distributed.

We can look online- its an introduction we are looking for

The licensed toy market is not applicable to us.

I am afraid this is not what we expected - to be honest I don't feel very comfortable with the way his is working out.

I will pass this back to our legal dept.

Paul

19. March 18, 2012, 4:01 PM; Jessup to Sullivan-Brady

Michelle

I didn't receive a reply to my last email.

Our agreement was simple and clear.

In light of you not fulfilling your side of the bargain I have no option but to withdraw my permission for our intellectual property to be used by your agency in any advertisement.

We have informed our legal representatives in the US of our decision and have alerted our web team to ensure any advert released by your agency does not feature the Great British Robin Hood

Paul Jessup

20. March 19, 2012; 12:47 PM; Sullivan-Brady to Jessup

Paul,

I'm sorry that it took a few days for me to reply to your last email. Partly it was because I was in shock.

In our original email trail, I specified to you that we are an advertising agency and we do not have any clients in the toy business. That said, I have been making a good faith effort to find a distributor for you, in the spirit of our agreement, however there have been some hiccups and delays due to the fact that this is not my normal area of expertise and I am starting from scratch.

I have reached out to all of my contacts about this and asked for help from everyone at the agency. I have a few promising leads, but it has taken some time because they are not direct contacts and a few of the parties are travelling. I'm honestly not sure how to make this happen any faster, but I am trying to do my best.

Michelle

21. April 17, 2012; 10:33 AM; Jessup to Sullivan-Brady

Michelle

We have been patient - I will require confirmation by return that you have not used our product in your advertizment or preferably that you have honoured our agreement and you now have a distributor ready to meet us.
regards

22. April 17, 2012; 4:22 PM; Sullivan-Brady to Jessup

Mr. Jessup,

As I have said before, since this is not my field at all, it has taken me some time to find people who can get me answers. I have spoken to people at various levels and companies in the toy industry to get information and have finally managed to get referred to the president of Gund plush toys. Unfortunately, I found out today that they are unwilling to distribute items made outside of the US. I am also getting in touch with the people who order specialty toys for Hallmark gift stores here in America and I am working on getting in touch with the people who order for Toys R Us, a large US Toy chain.

However, in light of the urgency indicated by your frequent emails and the tone of them, I am not sure that I will be able to fulfill your hopes for meeting any of these distributors within the time frame that you apparently have in mind, in spite of my best efforts. When we made this agreement, you never indicated that you required this to be immediate. Had you done so, I would have done even more than I already did to manage your expectations. I am a Business Manager at an Advertising Agency and my normal 12-16 hour days working on advertising matters don't afford much time to do as much legwork in the toy industry as you apparently expected to be done. I regret that the timeframe that you had in mind was not clearer when we made our agreement, however I did say to you several times that this is not my field and that neither I nor the agency have any contacts in this field.

That said, yes, we did use the bear in our advertising, as I told you. At this point we should come to a clear agreement as to how best to move forward. I am willing to continue working to get you an introduction you to a distributor. However, you have to realize that this may take some time to accomplish. I suspect that you already know this is a difficult task. Please let me know how you would like to proceed and let us come to a final resolution as quickly as possible.

Regards,

23. April 25, 2012; 20:11:11 GMT; Jessup to Sullivan-Brady

Michelle

Please confirm the date the advertisement featuring our bear aired by return and provide a link to the advertisement so that I can see it.

Paul Jessup

24. April 25, 2012; 6:02 PM; Jessup to Sullivan-Brady

Michelle

I would appreciate the courtesy of a reply?

Is there a reason you don't want me to see the advert featuring our Brand?

If I do not get a reply I will contact your client.

25. April 25, 2012; 7:03 PM; Sullivan-Brady to Jessup:

Mr. Jessup,

Attached is a copy of the ad, as requested. This ad began running on 3/12 in rotation with other ads in the same campaign.

In addition, I am providing some other information for your files:

1. As mentioned in my previous email, I managed to get in contact with the an executive at Gund (one of the largest manufacturers/distributors of plush toys in the world) who was not interested in distributing British-made plush toys in the US and was unable to give me any information on someone who could do distribution of your line.
 2. I have been in contact with the buyers for the chain of toy stores Toys R Us and am waiting for a call back from them-hopefully by the end of this week. Unfortunately, it is often the case that you have to wait to get a reply from people.
 3. I have contacted someone that I know to enquire about the possibility of getting your line of products placed in the UN gift shop but, again, I am waiting to hear a response from them.
 4. I have contacted several specialty manufacturers and distributors who have told me that they are unable to help with my request.
 5. I have reached out to just about everyone that I can think of in my personal and professional network to see if they know of anyone in the toy industry. The most common response is that they don't have any contacts, but I continue to try.
- In short, I have been making a good faith effort to help you find a distributor in the US and I will continue to do the best that I can.

Regards,

Michelle Sullivan-Brady

26. April 26, 2012; 7:03 PM; Sullivan-Brady to Jessup

Mr. Jessup,

I'm not sure if you realize that your initial request was only a few hours ago, at the height of the work day here in New York. Perhaps the waiting time appeared longer to you for some reason, however be assured that the reason for the delay was not caused by my intention to be, in any way, discourteous to you, but simply due to the fact that everyone here is very busy and it has taken some time to get a copy of the requested ad from our production department.

Attached is a copy of the ad, as requested. This ad began running on 3/12 in rotation with other ads in the same campaign.

In addition, I am providing some other information for your files:

1. As mentioned in my previous email, I managed to get in contact with the an executive at Gund (one of the largest manufacturers/distributors of plush toys in the world) who was not interested in distributing Britishmade plush toys in the US and was unable to give me any information on someone who could do distribution of your line.

2. I have been in contact with the buyers for the chain of toy stores Toys R Us and am waiting for a call back from them hopefully by the end of this week. Unfortunately, it is often the case that you have to wait to get a reply from people.

3. I have contacted someone that I know to enquire about the possibility of getting your line of products placed in the UN gift shop but, again, I am waiting to hear a response from them.

4. I have contacted several specialty manufacturers and distributors who have told me that they are unable to help with my request.

5. I have reached out to just about everyone that I can think of in my personal and professional network to see if they know of anyone in the toy industry. The most common response is that they don't have any contacts, but I continue to try.

In short, I have been making a good faith effort to help you find a distributor in the US and I will continue to do the best that I can.

Regards,

Michelle Sullivan-Brady

A (non-animated) rendition of the ad as it was run and sent to Jessup is set forth on the following page. The animated version can be seen at: <http://tvpdev.com/zyt/300x250>; username tvp and password tvp.

1

¿Picazón en los ojos?



Itchy eyes?

2

¿Picazón en los ojos?



Itchy eyes?

3

Puede ser alergia
a los ácaros
de tu peluche
favorito.



It could be an allergy to the dust mites from your favorite stuffed animal.

4

Prueba ZYRTEC®
para aliviar
los síntomas
de alergias.



Try ZYRTEC® to alleviate the allergy symptoms.

love the air™

Use only according to the indications

FIND OUT MORE

Repeat

27. April 26, 2012; 4:54 AM; Jessup to Sullivan-Brady.

Michelle

Thank you for sending the .swf file of the advert.

There was no sound on the file you sent me - did the aired version have commentary?

regards

28. April 26, 2012; 11:46 AM; Sullivan-Brady to Jessup

Good morning, Mr. Jessup. The finished ad has no audio.

Regards,

Michelle Sullivan-Brady

Dated: July 9, 2012

Michelle Sullivan-Brady